IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 744 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SULTANALI AKBARBHAI - Opponent(s)

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Appearance :
MR IM PANDYA, APP for Appellant(s) : 1,
MR DP KINARIWALA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. The Appellant – State has filed this Appeal under Section 378 of Cr. P.C. against the Judgment and order of acquittal dated 25.2.1999

passed by the learned J.M.F.C., Rajula, on 25.2.1999 in Criminal Case No.241 of 1994.

2. The respondent is the original accused against whom the original complainant filed above mentioned Criminal Case for the offence under sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 (for short “PFA Act”). The said Judgment of the trial Court has been challenged by the State on the ground that the Judgment and order passed by the learned Magistrate is against the law and evidence on record.

3. According to the prosecution case the complainant Shri R.N.Joshi, Food Inspector, visited the shop of the respondent - accused Sultanali Akbarbhai, which is in the name of “M/s. Siraj Ali Sultan Ali & Company, on 28.9.1993 and purchased 450 Grams Sesame Oil (“Til Tel”) which was collected in a stainless steel vessel. The said sample oil was sealed in presence of panchas and was sent to the Public Analyst, Bhuj. Upon receipt of the Report from the Public Analyst it was found that the sample oil was not of a prescribed standard and was adulterated and, therefore, after obtaining sanction from the State Government the complaint was filed against the accused – present respondent under the provisions of Sections 7(1) and 16 of the Prevention of Food Adulteration

Act (for short “PFA Act”).

4. Thereafter summons was served on the accused (respondent). The accused was given copies of case papers and after examination of the complainant, charge was framed against the accused. Thereafter, plea was taken vide Exh.49 in which accused pleaded not guilty. The prosecution led oral as well as documentary evidence, including oral evidence of the complainant and Panchas and other witnesses were not examined and thereafter the arguments were heard from both the side and after hearing the parties and after appreciating the oral as well as documentary evidence, the learned Magistrate vide impugned Judgment, acquitted the respondent – accused. It was observed by the trial Court that that the prosecution has not examined the Panchas and other witnesses. Thereafter the trial Court came to the conclusion that from the evidence produced before it the prosecution has failed to establish its case beyond reasonable doubt and that there is no substance in the matter and consequently acquitted the respondent – accused.

5. Shri I.M. Pandya, learned APP, appearing on behalf of the appellant – State contended that the order of the trial Court is bad in eye of law; against the provision of the Act; the trial Court failed to appreciate that the complainant

– Food Inspector had taken a sample of Sesame Oil (Til Tel) from the shop of the respondent – accused which was sent for analysis and as per the Report of Public Analyst it was found that the said Sesame Oil was of a sub-standard quality and so the complaint was filed against the respondent accused, but, the trial Court has failed to consider the ingredients of the complaint. Mr. Pandya has placed reliance of the decision of Bombay High Court in the case of STATE OF MAHARASHTRA v/s. ARJUN HARGOVAN RATHOD, reported in PFA Cases 1993 (2) 249 in which it was held by the Bombay High Court that if the Food Inspector has deposed in his examination in chief with regard to cleaning of container at the time of taking sample and when the said fact is mentioned in panchnama, then it can not be said that Food Inspector has violated the provision of Section 14 of the Act. Shri Pandya has also contended that in the Criminal case the complainant has stated in his deposition (Exh.23) before the trial Court with regard to cleaning of container and cleaning of apparatus while taking the sample from the accused person and this fact has been corroborated by the Panchnama at Exh.30 and yet the trial Court has not considered the said fact. Lastly he has contended that the prosecution has proved its case beyond reasonable doubt.

6. Learned Advocate Shri D.P.Kinariwala, appearing

on behalf of the respondent – accused contended that Rule : 14 of the PFA Act is mandatory. He has relied upon a decision of this Court in the case of STATE OF GUJARAT v/s. SOHANLAL TRIKAMCHAND SHAH & ORS., reported in 1995 (2) GLR 1099 and submitted that so far as the present case is concerned the complainant has failed to convince the trial Court regarding fullfilment of Rule : 14 of the PFA Rules. He has contended that this Court has observed that the said Rule is mandatory and it is the duty of the prosecution to prove by leading positive evidence that the bottles were cleaned and dried before the sample was taken by the Food Inspector. He has also contended that in the present case it was the duty of the Inspector to prove beyond reasonable doubt that all ingredients of provisions of law are followed by him. It is also contended that having regard to the facts and circumstances of the case, this Court has found that it is true that Rule 14 is mandatory and from the evidence produced before the Court it shows that the Food Inspector has failed to follow Rule : 14 and from the evidence produced it appears that it was the duty of the prosecution to prove the case beyond reasonable doubt. It has also been observed that all the ingredients of the provisions of the PFA Act are required to be proved beyond reasonable doubt which are mandatory in nature, but the prosecution has failed to do so.

7. The manner of sending the sample for analysis is prescribed in Rule-14, and it is clear that the sample of food article for the purpose of analysis is required to be taken in clean and dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation and in the case of dry substance, entrance of moisture and the same should be carefully sealed. In the present case the complainant – Food Inspector himself has led his oral evidence as to compliance of the provision of Rule 14. It is an admitted fact that Rule 14 is mandatory. The Court has come to the conclusion at this juncture that non-compliance of mandatory rule is fatal to the prosecution case and the Appeal against acquittal order can be disposed of only on this count and looking to the said fact it is not necessary to enter into the merit of other grounds on which acquittal is based. From bare perusal of oral as well as documentary evidence led by the prosecution, it is established that mandatory provision of Rule 14 have not been complied with and prosecution has failed to prove the same beyond reasonable doubt. Hence, on this count along, present appeal requires to be dismissed.

8. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to

re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

9. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 25.2.1999 passed by the learned J.M.F.C., Rajula in Criminal Case No. 241 of 1994, acquitting the respondent – accused, is hereby confirmed. Respondent – accused is on bail. His bail bonds stand cancelled.

(Z.K.SAIYED,J.)

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